

National Parks and Conservation Association

Interest: private non-profit citizens organization dedicated to preserving national parks

General Support for SDARS:

- The national coverage of satellite DARS would benefit both employees and users of national parks.
 - The channel options of satellite DARS could provide programming opportunities for environmental and educational programming in remote areas.

Franklin R. Rogers

Interest: resident of a mountainous area (Santa Cruz, California)

Licensing policies:

- It would be inappropriate to auction spectrum for satellite DARS.
 - Because of the limited availability of national-wide satellite spectrum, an auction for such spectrum would greatly increase the cost to satellite service for consumers.
 - This cost would be extremely harsh on consumers who already have to pay for the cost of equipment and subscriptions.

Sat Tech Systems, Inc.

Interest: consultant in satellite industry

General support for SDARS:

- In addition to the obvious benefits of satellite radio, satellite DARS can be used for many other technical services such as:
 - transmitting correction data for GPS receivers providing position information to vehicles,
 - providing data on traffic congestion and vehicular emergencies,
 - providing emergency, safety and public service data on a nationwide basis.

**United States Department of Commerce,
National Institute of Standards and Technology**

Interest: developing and coordinating standards and measurements for time and frequency

General support for SDARS:

- SDARS can be used to disseminate accurate time for a wide range of applications on a nationwide basis.

Winnebago-Itasca Travelers

Interest: association of 12,000 Winnebago and Itasca recreational vehicle owners

General support for SDARS:

- Satellite DARS would provide high quality programming for recreational vehicle owners who are often situated in or travelling through remote areas that lack informational and entertainment programming.
- Increased informational and entertainment programming in remote areas will contribute to the safety and enjoyment of recreational vehicles.

Licensing policies:

- The Commission should move quickly to establish satellite DARS so its benefits can be enjoyed as quickly as possible.

Women in Communications

Interest: promoting women in the communications industry

General support for SDARS:

- We strongly support the pioneer work of CD Radio in enhancing freedom of speech and open communications for all individuals.



Cracker Barrel Old Country Store, Inc.

Interest: retail and restaurant chain with a desire to build a DARS system

Licensing policies:

- The FCC may lawfully reopen the SDARS application window. (3)
 - CD Radio's reliance on *Ashbacker* is misplaced since it does not establish any prohibition on the reopening of cut-offs. *Ashbacker* simply held that the Commission may not render meaningless a party's statutory right to a hearing by granting a mutually exclusive application before the hearing has taken place. (3)
 - Cases cited by the SDARS applicants demonstrate that the Commission has discretion to consider whether to reopen filing periods if it finds that a reopening would be in the public interest. (4)
 - As the Commission ruled in *Alabama Citizens for Responsible Public Television*, cut-offs may be waived in "unusual and compelling circumstances." The DARS proceeding is just such a case. (5)
- The Commission needs to seek more complete information on the issue of potential channel capacity since the four DARS applicants have provided a wide variety of conflicting data. (6)
- At least six SDARS operators can be accommodated in the 50 MHz of allocated spectrum. (9)
 - Thirty channels can be carried in an 8.32 MHz national beam in a TDM mode. (9)
 - Thirty-two channels can be carried in an 8.32 MHz national beam in a CDM mode. (9)
- Even more than 32 channels can be carried in either mode if a higher order modulation is feasible. (10)
 - Dr. Lawrence Milstein, an expert for Cracker Barrel, questions CD Radio's assumption that QPSK is the most efficient modulation technique. (10)

- Dr. Milstein points out that the use of a higher order modulation constellation, such as 16-QAM would double the number of channels available, although he acknowledges that it would increase satellite costs. (10)
- Additional licensees could be accommodated in the 50 MHz of spectrum if fewer channels were made available to each licensee. (11)
 - None of the applicants or commenters except CD Radio have provided the Commission with evidence indicating how many channels are required in order to insure economic viability. (11)
 - CD Radio's analogy between cable radio and SDARS may not be sufficiently relevant to support a conclusion that a certain number of channels is necessary for economic viability. (12)

Appendix A: Comments of Lawrence B. Milstein, Ph.D (E.E.), University of California, San Diego Department of Electrical and Computer Engineering

Media Access Project

Interest: public interest organization

Licensing policies:

- In order to prevent the hoarding of spectrum, satellite DARS licensees should be given no more spectrum than is necessary for an economically viable system. (12)
 - The proposals of current licensees indicating a necessity to license all the spectrum currently available should be considered suspect by the Commission. (12)
 - The Commission should conduct its own study on the technological requirements of satellite DARS service and on the need for maximum channel capacity in order to produce economically viable systems. (13)
- If a DARS applicant drops out, the Commission should not allow other licensees to stockpile spectrum by purchasing its orbital slots and frequency assignments. (13)
 - In this regard Media Access Project is in concurrence with CD Radio's proposal to prohibit spectrum aggregation. (13-14)
- Because the current four applicants will be receiving spectrum for free and not through auction, the licensees should be barred from providing ancillary services over the spectrum provided. (15)
 - If the Commission does allow the current DARS applicants to provide ancillary services, the Commission should, at a minimum, establish a procedure to recapture for the public some of the value of the public spectrum and to prevent unjust enrichment of the licensees. (18)

Regulatory classification:

- Satellite DARS should be classified as broadcasting and required to serve the public interest under Title III of the Communications Act.
- A satellite DARS system would fall under the legal definition of a broadcaster for Commission regulatory purposes. (3)

- Even subscription-based satellite DARS systems may qualify as broadcasters if the decoding devices for such systems become widely held by the public. (4)
- Even if the Commission does not classify satellite DARS as broadcasting, comparable public interest obligations should be imposed. (2)
 - AMRC concedes that as a matter of public policy it would be "reasonable" to apply public interest requirements on an advertising-supported satellite DARS system, but not on a subscription based system. (3)
 - Even subscription-based DBS services have to comply with some Title III requirements and satellite DARS systems should also. (4)
- Without Commission regulation, market forces will not guarantee that satellite DARS licensees will sufficiently serve the public interest. (5)
- *Daniels Cablevision* does not pose an obstacle to imposing public interest obligations on satellite DARS licensees. (7)
- Media Access Project strongly supports the proposal of NAB that the Commission use a "promise-versus-performance" approach to ensure that satellite DARS licensees live up to their pledges of benefitting the public through offerings to rural listeners, non-English speaking audiences, and programming to minority and ethnic groups. (9-10)
 - Media Access project is aware, however, of the irony of the fact that NAB has proposed this approach for satellite DARS but for years opposed the use of this approach for broadcast licensees. (10)



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Amaturo Group of Texas; California; Los Angeles, Ltd.

Interest: group owner of radio stations

Effect of SDARS on conventional broadcasters:

- SDARS would increase diversity but would weaken the ability of local stations to provide local service.
 - The greatest harm to local service would occur in small markets.

Licensing policies:

- If deploying SDARS is inevitable, steps must be taken to insure the new service serves the public interests.

National Association of Black-Owned Broadcasters, Inc.

Interest: trade association representing the interests of African-American-owned commercial television and radio stations and cable television systems

Licensing policies:

- NABOB supports NAB's position that if the commission does create satellite dars it should be:
 - Licensed only on a non-broadcast, subscription basis,
 - Required to meet a promise-versus-performance public interest obligation, and
 - The spectrum should be reopened for new applicants before any systems are licensed.

Effect of SDARS on conventional broadcasters:

- The NAB has documented that local terrestrial radio service will be negatively impacted by satellite DARS.
 - NABOB therefore supports NAB's position that the Commission should not license DARS.
- Satellite DARS will have a negative effect on the ability of African-American-owned radio stations to continue to serve the public.
 - Minority-owned stations will be disproportionately hurt by satellite DARS because minorities tend in general to own smaller stations. (This is because African-Americans were prevented from obtaining ownership of stations until recently.) (5)

National Association Of Broadcasters

Interest: trade association of broadcast property owners

General opposition to SDARS:

- Despite its promise, satellite DARS will bring little public benefits.
 - Currently a wide diversity of mainstream format are available in all but the smallest markets. (2)
- The promise of the SDARS applicants of foreign language channels cannot be relied upon. (3)
 - The only niche foreign language programming discussed by DARS applicants is Spanish programming, which is already widely available from local terrestrial stations. (3-4)
- NAB finds it somewhat surprising to see CD Radio argue that business imperatives will lead them to program less popular formats. (4)
 - It is also notable that in CD Radio's S-1 filing with the Securities and Exchange Commission (a filing known for its need to be accurate) only one foreign language channel, that of Spanish is listed. (5)
- The DARS applicants under-represent and misrepresent the number and availability of terrestrial radio stations in the United States. (6)
 - The DARS applicants misrepresent the number of terrestrial radio stations by referring only to the reach of FM radio stations and completely ignoring AM radio stations. (6)
- Satellite DARS will not bring much lasting benefit in terms of jobs or U.S. competitiveness, but will create significant job losses in local radio. (8)
 - The satellite technology being employed by the DARS applicants is not a new technology that would increase U.S. competitiveness but is rather a run-of-the-mill decade-old satellite transmission technology. (8-9)
 - Thus the U.S. is and will remain the world leader in satellite design and construction irrespective of whether satellite DARS is ever deployed. (9)

- The only jobs that satellite DARS will create is short-term employment for the construction of satellites. (9)

Licensing policy:

- There is no legal or public policy basis for affording cut-off protection to current satellite DARS applicants. (40)
 - Given the decision by the Commission since the cut-off point to allocate 50 MHz of prime spectrum to satellite DARS, the public interest will be best served by providing a fresh opportunity for as many applicants as possible to apply for DARS licenses. (40)
- The real argument of the satellite DARS applicants is not one of alleged cut-off rules or public policy but one of alleged "equities" that somehow attach to the current applicants. These claims of "equity," however, are erroneous. (43)
 - CD Radio is somehow claiming that equity should attach to its application for a service prior to the service being authorized by the Commission. (43)
 - It is not inequitable to make CD Radio compete and pay for a satellite DARS license particularly in light of the fact that the spectrum CD Radio seeks is probably worth 10 or 20 times the amount that the company has expended trying to obtain one. (45)
 - The same argument is especially true for the other three satellite DARS applicants. (46)
- The Commission should reject the satellite DARS applicants' self-serving channel plan. (47)
 - The current satellite DARS applicants' systems proposals now differ in significant respects from those that they had originally proposed. These differences do not appear to be motivated by breakthroughs in technology. Instead, they appear to be carefully tailored to ensure that the current applicants make full (and wasteful) use of the available spectrum in a manner that eliminates the possibilities of both additional competitors and mutual exclusivity. (50-51)
 - The proposed satellite DARS applicants' channel plan is not spectrum efficient whether judged by the standards which the applicants themselves put forth or against a more innovative and efficient system such as that proposed by Cracker Barrel. (51-52)

Effect of SDARS on conventional broadcasters:

- The Commission can and should consider the impact of satellite DARS on traditional radio, on localism and on the public interest. (11)
 - There is no merit to the argument that as a matter of law or policy the FCC should not inquire into the impact of a new service on local radio service and the public interest. (12)
- The radio industry currently has too many stations due to the effects of Docket 80-90 and currently the industry is highly competitive. (12-13)
 - The overall consequence of the increase in station numbers and power levels was an adverse impact on localism. (13)
 - The decreased revenues brought about by Docket 80-90 caused stations to lay-off staff, reduce expensive local programming and increasingly rely on satellite-delivered programming. (14)
- DARS applicants misconstrue the financial health of the radio industry by focusing only on robust markets and companies. (15)
 - Instead, the radio industry in many markets and for many station owners is in difficult financial shape. (15-19)
- Satellite DARS clearly will present competition for local radio's audience and advertising. (19)
 - A reading of the hundreds of letters that individual broadcasters have filed in this proceeding clearly shows that broadcasters firmly believe that satellite DARS will compete for and draw away some of its national advertising. (22)
- The contention that local radio won't be hurt because satellite DARS can't compete with radio's local content is incorrect. (23)
 - Local content simply doesn't have an adequate revenue base to sustain an entire local station operation. A loss in audience for non-local programming will damage station revenues. (23)
- The fact that automobile-based radio listenership continues to grow does not mean that the radio industry has not lost an increased percentage of its auto-based listenership to CDs and cassette players in automobiles. (24)

- CD Radio's InContext study is flawed in significant respects. (25)
- AMRC's and Primosphere's MTA revenue impact study is based on faulty assumptions, such as relying only on FM stations, and the study must be completely discounted. (26)
- Satellite DARS will severely impact the financial ability of broadcasters to provide local service, particularly in the smaller markets and particularly for niche and Spanish language broadcasters. (30)
 - Comments of broadcasters, particularly those offering niche programming, demonstrate that broadcasters view the impact of satellite DARS as damaging. (30)
 - Even a small percentage audience diversion from satellite DARS will severely impact small market local radio. (31)

Regulatory classification:

- In order to protect terrestrial radio from the harmful effects of satellite DARS, the Commission should authorize satellite DARS on a subscription only basis. (34)
- The Commission should adopt regulations which force satellite DARS licensees to deliver on their promises to serve underserved, ethnic and niche populations. (36)

Technical standards:

- The satellite DARS applicants' proposed spectrum plan is contrary to the public interest to the extent that it allows the applicants and not the Commission to determine the use of the cross polarization frequency band regardless of their capacity needs. (53)
- The spectrum plan proposed by NAB serves the public interest by making efficient utilization of the available spectrum rather than just cutting up the spectrum evenly between the existing applicants. (54-55)

Attachment 1: The Truth About Satellite Radio, National Association Of Broadcasters

Exhibit A: Letter From The Los Angeles Philharmonic

Exhibit B: Comments Of Tichenor Media System, Inc.

Noble Broadcasting Group

Interest: group owner of radio stations

Effect of SDARS on conventional broadcasters:

- Satellite DARS will have a direct adverse effect on the public as broadcasters are forced to decrease their local programming in response to the deployment of this new service.
 - Satellite DARS has the potential of being the "last straw" that brings about the demise of localism in broadcasting.
 - Those radio stations currently providing localized "niche" programming may be forced to forego such programming in order to compete with DARS.
- The statistics show that satellite DARS providers will have a much greater penetration and much larger audience diversion effect on terrestrial radio than the SDARS applicants have admitted to.

Mt. Wilson FM Broadcasters, Inc.

Interest: licensee of KKGO-FM, Los Angeles, California

Effect of SDARS on conventional broadcasters:

- Local terrestrial radio stations, especially niche format radio stations, struggle to attain the most microscopic of market shares.
 - With such a meager audience base it logically follows that even the loss of a small fraction of the audience will adversely impact niche formatted stations.
 - The reduction in overall listeners for each station will make it more difficult for stations to sell advertising time, even if satellite DARS operators run on a subscription-only basis. (4)
- CD Radio's tacit admission that satellite radio will compete with terrestrial radio for national advertising guarantees an adverse impact on KKGO-FM. (4)
 - KKGO-FM receives as much as 30% to 40% of its advertising dollars from national advertisers. (5)
- While the immediate implementation of satellite DARS may provide more service to rural Americans, it would sound the death knell for local public interest programming by both small market stations and large market niche format stations. (6)

Tichenor Media Systems, Inc.

Interest: licensee of thirteen Spanish language radio stations

General opposition to SDARS:

- The Hispanic community will not be better served through satellite radio.
 - Satellite radio will not be able to provide "local" hispanic programming, which serves the hispanic community the best.
- Studies show that the public is overwhelmingly satisfied with the current system of radio broadcasting in this country.

Effect of SDARS on conventional broadcasters:

- Local terrestrial radio stations, especially Spanish language radio stations, will be hard hit by satellite DARS.
 - The reduction in overall listeners for each station will make it more difficult for stations to sell advertising time, even if satellite DARS operators run on a subscription-only basis.
 - Additionally, satellite DARS will directly compete with local radio for national advertisers. This will be difficult for Tichenor Media Systems since one quarter of its advertising dollars comes from national sponsors.

Technical standards:

- Satellite DARS should not be allowed to originate local programming through the use of terrestrial repeaters.